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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/917,082	07/30/2001	Yehia Awada	PA114-01	9110

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EXAMINER

CAPRON, AARON J

ART UNIT	PAPER NUMBER
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3714

DATE MAILED: 11/19/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/917,082

Applicant(s)

AWADA, YEHIA

Examiner

Aaron J. Capron

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 September 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

MARK SAGER
PRIMARY EXAMINER

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DETAILED ACTION

This is a response to the Amendment received on September 3, 2002, in which claims 17 and 19 were amended. Claims 1-20 are pending.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over de Keller (U.S. Patent No. 5,975,529; hereafter "de Keller").

de Keller discloses a method of playing a game wherein the steps are dealing cards to a player, providing an opportunity for a player to make a wager on a rank of a poker hand from the cards dealt (4:34-35 and 5:8-9), dealing out community cards (4:39-52), providing an opportunity to make a wager based on cards dealt and the community cards (4:35-38), and settling wagers.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 2-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over de Keller in view of 357.

Referring to claims 2-3 and 8-9, de Keller discloses a method wherein the player is dealt a plurality of cards and a plurality of community cards to create a poker hand, but does not disclose having a player wagering on a three card poker, five card poker and a seven card poker. However, 357 discloses having a poker game that initially starts out with three card and discloses a player wagering on a three card wager, a five card wager and a seven card wager and makes a payout to a player based on the rank of the hand. Further, both references pertain to poker games using seven cards. An artisan would be motivated to combine de Keller in view of 357 since multiple wagers increase the opportunity of larger winnings (increase pot). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add wagering after the three, five and seven card wager, as suggested by 357, into de Keller's game since the incremented successive wagering increases the winnings, thereby increasing excitement among the players.

Referring to claim 4, de Keller in view of 357 discloses a poker game with community cards, but does not disclose that all of the community cards are dealt face down. However, it is notoriously well known in the art to deal the community cards face down in order to generate larger pots. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add dealing the community cards face as known to de Keller's game in view of 357 in order to increase the size of pots/winnings and increase excitement of play.

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Referring to claim 5, de Keller in view of 357 discloses a poker game with community cards, but does not disclose that all of the community cards are dealt face up. However, it is notoriously well known in the art to deal the community cards face up (such as the poker game of Texas Hold'em: In paper #4, Banyai discloses the game of Texas Hold'em). In the game of Texas Hold'em, the community cards are dealt face up and the player cards are dealt incrementally to permit the multiple rounds of wagering in order to increase the pot. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add dealing the community cards face up, as known to de Keller in view of 357, because the cards could be dealt out face up after the player sees the cards in their hands without losing the appeal of risk to the game.

Referring to claims 6 and 12, de Keller discloses using a joker as a wild card (5:51-52).

Referring to claims 7 and 13, de Keller discloses a method of playing poker that includes the capability of using a bonus payout to the player based upon a poker hand being higher than a known rank (5:8-13 and 4:6-19).

Referring to claim 10, de Keller in view of 357 discloses a poker game with community cards and having a betting round to increase the wager prior to the cards being turned face up (5:8-9 and 5:33-50).

Referring to claim 11, de Keller in view of 357 discloses that a player can rescind the seven card wager upon forfeiture of a portion of the seven card poker wager (357 rules). In 357 a player can declare that he/she is out without forfeiting any winnings.

Referring to claim 14, de Keller discloses having a poker game (whether Draw or Stud) wherein a player can receive 4 cards and three community cards to form the best five card poker

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hand out of seven cards, but does disclose wagering and paying out based on a three card poker hand. However, 357 discloses wagering and paying out based on a three card poker hand. One would be motivated to combine the references in order to accommodate 8 or more players and since both games relate to versions of 7 card stud poker. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate 357's method into de Keller's because the additional betting round could create the possibility of having multiple winners in one hand and generate more interest amongst players.

Referring to claims 15, de Keller discloses using a joker as a wild card.

Referring to claims 16, de Keller discloses a method of playing poker that includes using a bonus payout to the player based upon a poker hand being higher than a known rank.

Claims 17-18 correspond in scope to a method set forth for use of the structure listed in claims 1-16 and are encompassed by use as set forth in the rejection above. It is shown from de Keller that the poker game can be played on either a table type setting or from a video game machine.

Claims 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weingardt (U.S. Patent No. 5,042,818) in view of Jones (U.S. Patent No. 6,402,150). Where "fifty-two cards of a standard deck of cards" is a preamble term that fails to breath life and meaning into the claims since it is not 'essential to point out the invention defined by the claim'. *Kropa v. Robie*, 88 USPQ 478, 481 (CCPA 1951). Further, the term does not limit the structure of the claimed device. *In re Stencel*, 4 USPQ2d 1071 (Fed. Cir. 1987). Finally, the term recites an intended use of structure where the claim body does not depend on the preamble for completeness such that

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the structural limitations stand alone. *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976).

After reviewing the body of the claims, the Examiner has determined that the claimed invention fails to preclude multiple decks of cards. Further, Weingardt discloses gaming machine storing images of 52 cards of a standard deck (5:44-49).

Weingardt discloses a poker game where a player has an option of placing a five card and seven card wager (4:29-42), the option of playing 5 card draw poker with the first five cards (2:60-3:7), the ability to make a five card payout to the player based on the wager, providing two additional cards faced up, and making a seven card payout to the player based upon rank of five cards in the seven card hand (13:1-50), but does not teach two separate payouts. However, Jones discloses a poker game that has two separate payouts on the same hand (2:49-3:5). Jones (2:49-5:26) teaches a second separate payout in a poker game for distinguishing a modified poker hand from receipt of additional cards or participating in a jackpot or secondary game. Jones suggest adapting "any casino game in which an initial set of cards is dealt, a player reviews the initial set of cards and then the player receives additional cards" (5:27-32). Both references refer to casino card games, specifically to poker. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add an extra payout, as taught by James, to Weingardt's game because it would create a better chance of winning and therefore create more interest among players.

Referring to claim 20, Weingardt in view of Jones discloses a poker game, but does not disclose using a joker as a wild card. However, it is notoriously well known in the art of playing poker, as a variation, to use jokers as wild cards. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate jokers, as

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known, into Weingardt's game in view of Jones because of the potential to create larger hands and bigger payouts would generate interest among players.

Response to Arguments

Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.

Further, with respect to claims 4-5 and 10, Applicant failed to traverse Examiner's well known statements which are thus taken as admitted prior art.

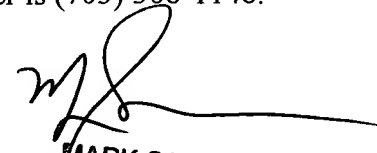
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aaron J. Capron whose telephone number is (703) 305-3520. The examiner can normally be reached on M-F 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Hughes can be reached on (703) 308-1148. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

ASC
November 14, 2002


MARK SAGER
PRIMARY EXAMINER